

## **REMARKS**

### **Interview Summary**

The undersigned would like to express appreciation for the Examiner's time in meeting on 24 June 2004 to discuss this case. During that interview, the status of claims 2, 32, and 45 was discussed and it was agreed that these claims should be allowed as they depend from allowed claims. In addition, the claim rejections over Wan were discussed, with particular focus on the "based-on-speed" approach of Wan versus Applicant's "based-on-position" approach. It was agreed that Applicant would amend independent claim 3 and related claims to more clearly point out, in claim language, this distinction. The specific claim language discussed was "based on position of said mobile station independent of the speed of said mobile station," or something substantially to that effect.

A copy of the corresponding "Applicant Initiate Interview Request Form" is being transmitted herewith. It should be noted that issue #1 has a typographical error and should reference claim 38, not claim 36.

### **Allowed Claims**

Applicant notes that the Examiner has allowed claims 8-9, 36, and 49. As such, further discussion with respect to the novelty and non-obviousness of these claims is considered moot.

### **Status of Claims 2, 32, and 45**

Consistent with the agreement reached with the Examiner during the interview, Applicant submits that claims 2, 32, and 45 should be allowed, as they depend from allowed independent claims. Notice to this effect is respectfully requested.

### **Claim Amendments**

Consistent with the agreement reached with the Examiner during the interview, independent claim 3 has been amended to read in part "wherein the frequency of performing said channel quality measurements is based on said position of said mobile station independent of the speed of said mobile station." Corresponding amendments have been made in rejected independent claims 33 and 46. Applicant recognizes that page 11, lines 9-13 of the specification of the present application discloses "another embodiment" where the frequency of performing the task (e.g., channel quality measurements) is based on "the rate of change in the position of the mobile station 16 over time." As discussed and agreed with the Examiner, it is intended that the limitations of "based on said position of said mobile station independent of the speed of said mobile station," and the like, are to be construed as not covering the "rate of change in the position ... over time" approach disclosed on page 11. Further, it was agreed that the phrase "independent of the speed of said mobile station" differentiates the claimed "based on position" approach from the "based on speed" approach of Wan. In view of these amendments, Applicant submits that all claims presently rejected over Wan contain position focused limitations that patentably distinguish the claimed subject matter from the speed based approach of Wan. Accordingly, Applicant respectfully requests allowance of independent claims 3, 33, and 46, and their dependent claims.

In addition, claim 4 has been amended to change the language "...said position of said at least one..." to read, "...the position of said at least one..." as required by the Examiner. The amendment is not intended to narrow the claim in any way, and is solely for addressing a minor informality issue noted by the Examiner. This amendment is believed to resolve the Examiner's objection to claim 4.

Further, claims 33 and 36 have been amended to change "transceiver for transmitting and receiving" to read "transceiver to transmit and receive;" to change "for periodically performing" to read "to periodically perform;" and to change "control logic for controlling" to read

"control logic to control." These changes do not narrow the scope of the affected claims, but instead merely make clear Applicant's intention that the relevant limitations not be construed as means/step-plus-function limitations under §112 ¶6. No new matter has been added. Similar logic applies to the amendment to claim 37.

Further still, claims 17-18 and 21-22 have been amended to correct several minor typographical errors without narrowing the scope of the same. No new matter has been added.

#### **Claim Rejections - Independent Claims 15 and 38**

The Examiner rejects independent claim 15 under §102(e) as being anticipated by Wan. Claim 15 explicitly requires that the position of the mobile station be updated periodically, with the "frequency of said updating [being] a function of said position of said mobile station." The Examiner cites column 7, lines 9-16 of Wan. For convenience, the cited passage appears below.

The mobile unit 106 may determine the speed or the rate of change of the received signal strength using several techniques. The speed a mobile unit 106 travels through a cell 108 may be determined using a Global Positioning System (GPS). Such systems are well known and can identify the location of an object. The speed of a mobile unit 106 may be obtained using GPS by taking several readings and calculating the change in location over time.

Wan, col. 7, ll. 8-15 (emphasis added). Whatever Wan may teach about determining position for use in contriving the speed of the mobile station, there is never any indication that the frequency with which position updates occur ever varies responsive to any impetus, let alone the position of the mobile station itself. At best, Wan simply discloses determining GPS coordinates on a regular basis for the sole purpose of deriving speed, with no impact whatsoever as to how often the position determinations themselves occur. Thus, even assuming *arguendo* that Wan teaches varying the rate of scanning for neighbor cells as a function of the position of the mobile station, there is no indication anywhere in Wan that the rate of determining that position varies in any way whatsoever based on position.

The Examiner appears to base support for the rejection on the assertion that position can somehow be determined from speed. Applicant respectfully disagrees. Simply because there is a rate of change in position does not mean that there is knowledge of where that position is, nor does it mean position can be inferred. For example, a mobile station traveling at a speed of 40 M.P.H. will traverse a distance between two positions of 40 miles in 1 hour's time. However, "40 M.P.H." says nothing about the where the mobile station starts from, nothing about where the mobile station finishes, and nothing about where the mobile station is at any point along the way. It is much like having a line's slope without having a Y-intercept; there are thousands of lines that satisfy the slope requirement, covering an infinite number of positions on at least one of those lines. So, knowing the slope alone does not narrow the down the position in any way. In short, position cannot be obtained from or inferred from speed itself, and one does not teach or suggest the other.

In view of the above, Applicant submits that Wan fails to teach that the "frequency of [updating a position of the mobile station] is a function of said position of said mobile station." Therefore, Wan fails to anticipate claim 15 under §102. Accordingly, Applicant respectfully requests the allowance of claim 15, and its dependent claims 16-26.

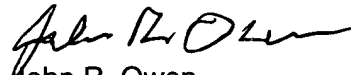
The Examiner also rejects independent claim 38 under §102(e) as being anticipated by Wan for the same reasons as those stated above with respect to claim 15. However, claim 38 requires, "control logic ... [to] ... [vary] the frequency of determining said position of said mobile station as a function of said position." Thus, for the reasons stated above, applicant submits that Wan fails to anticipate claim 38 under § 102. As such, Applicant respectfully requests the allowance of claim 38, and its dependent claims 39-43.

If any further issues remain, the Examiner is requested to telephone the undersigned so that such issues may be expeditiously resolved and the case move to issuance.

Respectfully submitted,

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